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NTSB REAUTHORIZATION

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

REAUTHORIZATION OF THE NATIONAL TRANSPORTATION SAFETY BOARD

JULY 22, 1986

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NATIONAL TRANSPORTATION SAFETY BOARD REAUTHORIZATION

TUESDAY, JULY 22, 1986

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION,
SUBCOMMITTEE ON AVIATION,
Washington, D.C.

The subcommittee met at 3:15 p.m. in room SR-253 of the Russell Senate Office Building, Hon. Nancy Kassebaum [chairman of the subcommittee, presiding.]

Staff members assigned to this hearing: Steve Johnson, staff counsel and Steve Palmer, minority professional staff member.

OPENING STATEMENT BY SENATOR KASSSEBAUM

Senator KASSEBAUM. The second part of our hearing will be Patricia Goldman, Acting Chairman, National Transportation Safety Board.

Welcome, Chairman Goldman, and I use Chairman because it may not be too often you will be back before us before Mr. Burnett is confirmed. We appreciate your being back with us this week regarding the reauthorization of funds for fiscal year 1987 through 1989 for the National Transportation Safety Board.

Senator Exon do you have a statement?

Senator EXON. No, I do not have a statement but I have one from Senator Hollings that he would like to have inserted into the record.

[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

Today, we are considering an enormously important piece of legislation which we must approve prior to the end of Fiscal Year 1986. I am speaking of the reauthorization of the National Transportation Safety Board.

The NTSB, which was made a separate agency in 1974, has provided Congress, the Department of Transportation, and the various transportation industries with a tremendous wealth of information on improving safety. Yet, as evidenced by last year's tragic aviation record, much more needs to be done.

The Safety Board has accomplished its mission on the barest of budgets. Both staffing levels and the agency budget were reduced from the fiscal year 1982 levels, and have not subsequently been increased. The net result has been that the Board has no room for further reductions. In fact, I believe that we should consider authorizing additional resources for the Board in the coming years.

In recent months, Congress has attempted to bring the number of Board members up to the full complement of five. However, realizing the importance of the Board in ensuring transportation safety, this Committee has acted to deny those nominations that were not technically qualified for the job. I am pleased by the confirmation of Joseph Nall, whose nomination I recommended to the President, and John Lauber, for Democratic seats at the Board. Both individuals are expected to make significant contributions to the Board's safety findings and recommendations, as they bring critical skills and strong backgrounds to the agency.

However, for maximum effectiveness, the White House must nominate a technically-qualified individual for the remaining seat. It has been too long since the Board operated with a full slate of five members.

Madam Chairman, I look forward to working with you and the Ranking Democrat, Senator Exon, on swift passage of this legislation. I believe strongly in the work of the Board, and believe that we must not delay in expressing that support.

Senator KASSEBAUM. Chairman Goldman, you may proceed.

STATEMENT OF PATRICIA A. GOLDMAN, ACTING CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD; ACCOMPANIED BY J. PETER KISSINGER, MANAGING DIRECTOR

Ms. GOLDMAN. Thank you. Thank you, Madam Chairman and Senator Exon.

I want to thank you for the support that your subcommittee and the full committee have given the Safety Board over these years. It has been a great comfort, particularly during unsettled time, for us to have that kind of support.

Much of what Jim Burnett has just testified covers a lot of the areas of special emphasis and interest that would set the Board's agenda during the upcoming authorization period, so I would like to just go briefly through some of the points.

Before I proceed, I would like to say that there was discussion about staff morale, and one of the things that has given the Safety Board its good reputation is the staff. For all the discussion, I think, particularly in an unsettled time of leadership that we have gone through, the support of the staff has been remarkable.

We have many of the staff leadership here today. They are available for questions if you have anything particular, and they are to be highly commended for the work that they have done under very difficult circumstances. I have with me at the table the Managing Director, J. Peter Kissinger, who can respond to your questions.

Since you have the material before you, I am sure you do not want to hear me read through all of it. I think the figures speak for themselves, but just for the record to make sure, I will go over them. Since I was here last week testifying to many of the items of concern to this committee on aviation, I will just highlight a couple of the things yet to be done and respond to questions.

As our formal testimony indicates, beginning with the fiscal year 1987 we request an authorization level of $24 million, which would increase to $25.4 million in fiscal year 1988 and $27 million in fiscal year 1989, with the proposed staffing level of 347 full-time equivalent employees.

Jim Burnett has spoken to what we can accomplish with those people and answered some of Senator Exon's questions. I would wholeheartedly agree. Jim and I frequently disagree, but I think he has not spoken anything in his testimony that does not reflect what the full Board feels with regard to the funding levels and what we can accomplish with our staff.

He has also spoken greatly to what we have accomplished. This bill that we are proposing speaks to what is yet to come. In addition to the things that Jim has mentioned, I would like to highlight some issues in the aviation area and run through some of the others.

There are some areas that we have been pursuing for quite some period of time with various agencies. In aviation, in addition to the oft-discussed questions of surveillance and Doppler radar, I would call attention to one other area that I would hope we can pursue with the Board, and that would be the issue of runway friction and contaminated runway.

As we sit here in the hot summer and we are all concerned with windshear and convective activity, I want to make sure that we do not have another instance of coming before you to talk about tombstone technology in the area of runway friction.

We have had a number of accidents where we have had contaminated runways. The Safety Board has made numerous recomendations to the FAA on that subject. Some progress has been made in getting equipment available, but we seem to be stalled again. That is an area that I wish to pursue, and is an example of one area that we would be pushing in aviation.

In the rail area which was discussed, we are delighted at the accomplishment of the past several years of the implementation of the rule G or alcohol and drug abuse rules. I think, however, we are going to have some way to go to make sure that that is well implemented. That is going to be an area of special attention for the Board.

Another area is the area of communication. We have been talking about communication across all forms of transportation. That is an elusive thing. How do we send messages, for example, even in going back to aviation in the question of the Delta 191, both on weather information and all the things we talked about?

In the rail area, communication has been a special problem. The advances are yet to be made on many properties to provide even the kind of radio technology and communication that is essential. So we will be working on that.

Jim touched on training. That is another area of emphasis which we expect to be working on and looking at, particularly in the rail area.

I mentioned briefly the other day, for all the occupation and preoccupation with aviation, the highway mode is still the greatest measurement of killers in transportatation that we have, and so it will be an area, as it has been, of concentration for the Board.

I think that we have touched on the hazardous materials. We have seen in the last week or so another pipeline accident of some magnitude in Minnesota. The Board is working on and continues to work

on the accidents in Kentucky and others where we have had pipeline problems, and that will be an additional area of emphasis for the Board.

That is a cursory touch on the major areas of emphasis, and I would be happy to respond to questions.

Senator KASSEBAUM. Thank you very much.

I guess one of the first would be, given budgetary limitations, because nobody has all of the budget money they would ideally like, how does NTSB set up the priorities for your operating procedures?

Ms. GOLDMAN. Well, we try to take our direction from you, because there are certain things that are set out in the statute. For example, one of the things in aviation is the investigation of fatal aviation accidents, so the investigation of major accidents is one of our primary responsibilities.

What happens in a time of extra crunch because we have many accidents to take care of or if we were cut are those things which may not get the headlines because they involve non-fatal accidents but may give us a greater safety payoff.

We may be restricted in the number of incidents that we can investigate. Those many times provide safety payoffs, greater sometimes than the highly publicized fatal accidents because they may result in good recommendations that can advance the cause of safety, regardless of whether they have had a large number of fatalities attached.

We also do not just investigate aviation or any other accident for the sake of accident investigation, but we look for trends. One of the things that we are able to do in either a lull period from the accidents or with adequate staff is to take the material from all the previous investigations and do special studies.

In the highway area, for example, I can think of the work we did on something that is particularly near and dear to my heart—on child safety seats, which has now resulted in all 50 states having child safety seat legislation. That is the kind of activity that in a time of particular budget crunch we do not have the staff available to do.

Senator KASSEBAUM. Do you feel that you have adequate levels of funding for staff at this point?

Ms. GOLDMAN. We feel, with the authorization levels that are here, that we do. It would permit us to staff back up in the human performance area, for example, which we are eager to do. We feel that we can do an adequate job to meet the directions that you give us and to do some of the special study areas to which I just referred.

Senator KASSEBAUM. I would like to ask you what your thoughts would be on the whole Doppler radar question. You heard Senator Gore's questions to Mr. Burnett. This came up particularly last fall in our aviation safety hearing.

It is about a $4 or $5 million cost per unit for the Doppler system. What would be your observations? Has FAA seriously fallen behind? Are they struggling with some priorities again with limited funding? Should we again fight more vigorously here to remove the Aviation Trust Fund from the budget so that there would be more moneys available?

I would like to hear your observations on whether it is a sadly negligent funding issue or if it is a question of trying to balance the needs of an entire system.

Ms. GOLDMAN. Well, I think it is a little bit of all of the above, with the exception of the trust fund question, which the Board has not spoken to, per se, although I may have my own feelings.

Having been on the Board seven years—there was a time at the beginning of that period that I came on the Board where we were not getting the kind of movement out of FAA that we thought there should be in terms of moving ahead on the research and implementation and speeding up that technological process.

Now that the attention of the FAA has been gotten, I believe that they are moving along the path that we have recommended because of the slowdown, if you will, or lack of activity in an earlier period that has put us behind where we might hope to be.

In terms of balancing all of the various needs of the FAA and what their funding abilities are, they clearly have to weigh those. We think this is an area where they could expand beyond what they have. As to exactly what that balance is, I am sure this committee will set targets for them, but I think we could do more than has been done there now.

Senator KASSEBAUM. Do you, as a Board, give priority listing to the safety considerations in your recommendations to FAA?

Ms. GOLDMAN. We always want everything all at the same time. We have not, for example, and not to make light of it, said we wish that you would move ahead on Doppler radar before you move ahead on general aviation crashworthiness or runway friction. We have not said one is more important than the other, because under any given circumstances they seem to us to be almost equally important.

We have not said that. We do feel that is somewhat of a management priority question for the FAA. Mr. Kissinger pointed out that in terms of what we recognize is something that can be accomplished perhaps more in the short term and that we wish them not to take as long term, we do qualify our recommendations, if you will, in categories for urgent action. This means to have something that really has to be done now. A priority action which we think is very important but which we recognize is going to take some time for research or a long time to implement. Doppler radar is something of priority; urgent may be something which, by a change or an airworthiness directive being put out, could be done tomorrow.

So in that sense, Mr. Kissinger is right. We do establish that. If you are talking about the big chunks of money for big technological advances, we do not rate those one over the other, although we do try to specify to the FAA. We do that to every other agency, by the way, not just FAA.

Senator KASSEBAUM. Moving from aviation for just a moment to the bus accident in Walker, CA, where 20 people, I believe, were killed and the driver of that bus had had speeding violation tickets previously. I do not know if there have been recommendations that you have made yet on that officially, but there is one question I would like to ask,

looking at that case and others where certainly the abilities of the driver, the truck driver or bus driver, have been called into question. Do you see a national commercial driver's license as anything that would be beneficial to improving safety?

Ms. GOLDMAN. We think that some sort of a national license would be beneficial. We have made recommendations in that area, particularly in terms of the national driver register.

To answer your question specifically, in Walker River that investigation is ongoing. In fact, I will be chairing a hearing on that accident in a site yet to be specified, but I believe in Reno in September. We will be taking up not only the issue of driver qualification, but also potential falsifying of records and multiple licenses, issues that we have seen come up repeatedly in the highway area and to which we have addressed various recommendations over the years.

We recently had an accident—more recent than the one in Walker River—in Arkansas involving a bus driver and I believe it was a tractor-trailer which was making a U-turn on a major highway. The driver hit that truck broadside. Again, we found another instance of numerous violations.

We feel there has got to be some way that those people be identified and not be allowed to be driving in such circumstances.

Senator KASSEBAUM. Well, in an instance like that, where do you make those recommendations for a driver? I know railroad goes to the——

Ms. GOLDMAN. We make those recommendations to the DOT and also to the Federal Highway Administration.

Senator KASSEBAUM. I was interested in something Mr. Burnett touched on. He said truck driver training, and I did not go back to ask what he had in mind, but are these not requirements that can be imposed on the various firms?

Ms. GOLDMAN. We would hope so, those that are in interstate commerce and subject to regulation. When we say truck driver training, that varies. People, in terms of how the licensing takes place—well, there are several issues to this.

We have, first of all, recommended that there be some sort of a general standard that is met by training. In addition, one of the things is that, depending upon the way the State regulations read, there is not always a requirement, for example, that a driver be tested in order to get the type of license to be driving the truck the driver is expected to be driving.

They vary so in handling characteristics. People need training in terms of, for example, a tank truck and whether it is loaded or not loaded and what its handling characteristics will be. So the type of training in those as well as the type of examination for drivers is sorely lacking.

In addition, we were talking about hazardous materials on the rails. Considering the amount of hazardous materials that is carried on the highway, for people to be driving those without any particular qualifications is of serious concern. In this area we have made recommendations.

I am sure this Committee has received a special study on training in this regard which we did.

Senator KASSEBAUM. Thank you.

Senator EXON.

Senator EXON. Thank you, Madam Chairman. Ms. Goldman, welcome to you.

You heard the questioning that we went through with the chairman-nominee earlier today, and I took it from your opening remarks that you agreed with him and with those of us on this side of the table that there are probably not enough people in your agency to do an adequate job.

Do you agree with that?

Ms. GOLDMAN. Well, I would like to say that we could have many more people. I think with the level that we are asking for here, we can get the job done as we have outlined it for you. We have been a little under that. That imposes the kind of limitations for staff when, as it was mentioned, we have only one or two people in a division, and that makes it very difficult. I think if these levels are agreed to, we can staff up in a few of the areas that we have been missing and do a proper job.

Senator EXON. I asked the chairman-nominee what he would like to do in the next two years, and I took it, and maybe the record speaks for itself, that he was simply saying that he felt that to do the job that we think should be done that we were going to have to have more people.

Is that what you heard him say?

Ms. GOLDMAN. That is what I heard him say.

Senator EXON. You do not agree with that?

Ms. GOLDMAN. No, I do agree with that. I also think I am enough of a realist, as I am sure he is, that we could always use more people. Given the kinds of safety problems that we just outlined for you, there is no end to those which we could be working on.

I think we are both, and I assume I may be able to speak for him, also realistic enough to realize that in this particular kind of budget crunch we are not going to get all that we might wish for in a blue sky desire.

Senator EXON. Were you, as acting chairman, under pressure from anyone, in the administration budgetmaking process or otherwise, to come in and request a budget freeze?

Ms. GOLDMAN. I never had a request, nor did I speak to anyone. No one made any request of me at all.

Senator EXON. I am not sure what you are testifying to.

Ms. GOLDMAN. Have I done it again, Senator?

Senator EXON. You are saying that, given the budget crunch, you, as the acting chairman of the National Transportation Safety Board, feel that you can do an adequate job by basically holding the line on your budget and the number of full-time employees. Is that right?

Ms. GOLDMAN. We think that we can do an adequate job, yes, sir. I would point to the difference. I say this because I have been on the Board seven years now. We had well over 400 employees when I first came on board, and in those days we had a pipeline division in the field, for example. That area has been cut back substantially.

We used to do railroad trespasser accidents, all of which would be nice to do but we felt, at the direction of the Congress in some cases, we had to focus on other priorities.

We feel with the funding level we are asking for here can concentrate and do the priority things adequately. More than adequately, we think we can do them well.

Senator EXON. When you came on board, that was before airline deregulation?

Ms. GOLDMAN. I came on in 1979, just about that time.

Senator EXON. You certainly agree, do you not, that your responsibilities have increased as we have more airplanes in the air, flying more hours and doing more things?

Ms. GOLDMAN. They have certainly also evolved in terms of the types of things that we are looking at, although wind-shear or some of the issues like that have not changed. The questions of surveillance, for example, the attention to different kinds of priorities and commuter safety have changed. So we are looking at different types of issues since deregulation, yes.

Senator EXON. Let me ask you a question in another way. I am trying just to get to the bottom of this, not to put you on the spot. I hope you understand that.

Ms. GOLDMAN. I hope to give you a direct answer.

Senator EXON. If we did not have a budget crunch, would your budget request be substantially different from the request that you have outlined and the 347 full-time employees?

Ms. GOLDMAN. I do not think I can honestly answer that. Let us say someone said, okay, within the budget situation there are many projects that I could think to work on. I would like to have, instead of maybe three air traffic control specialists as we have now, we might be able to do more in the evaluation of a particular program if we had those people. There is no question, we could do more.

We would have to decide where that fit in the spectrum of transportation desires. We could do more in highway.

Senator EXON. Thank you very much, Ms. Goldman, for your testimony. I am hopeful that we can get through the funding levels that you have outlined which, in my opinion, with the increased responsibilities—I would hope that we could get through this level and not have it cut below that level. It would seem to me that you are going to have to work these people awfully hard to maintain the job that we want you to do with the number of employees and the funding levels you have outlined. I congratulate you for being realistic.

Ms. GOLDMAN. Thank you.

Senator KASSEBAUM. I certainly concur with Senator Exon, and we will, I know, do all we can to make sure that those funding levels will be appropriated and maintained.

I would like to add, as well, that as a matter of fact the NTSB has done an extraordinarily good job, in these six years that I have been chairman of the Aviation Subcommittee with increased demands upon it. I think the professionalism that exists there today, and with what I hope will be a full complement of the Board soon, that it will make life a little easier. I think that it is a valuable service to transporation safety that you perform.

Thank you, Mr. Kissinger and Chairman Goldman.

Ms. GOLDMAN. Thank you. I will pass your words along to the staff. I know they will be appreciated.

Senator KASSEBAUM. Thank you.

[The statement follows:]

STATEMENT OF PATRICIA A. GOLDMAN, ACTING CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD

Madam Chairman, Members of the Subcommittee. I am pleased to appear before you on behalf of the National Transportation Safety Board. Your support for the goals and activities of the Safety Board has had a major and beneficial impact on our effectiveness. The other Members of the Board, the staff and I are very grateful for your active interest in our work. We look forward to continuing our cooperative relationship.

Before reviewing our authorization needs, I would like to introduce to you the management team. These dedicated people provide leadership and direction to our highly motivated and talented staff. They all deserve tremendous credit for our accomplishments, particularly in the current environment of cost cutting and scaled down expectations. We are very proud of them.

My mission today is to request your support once again—specifically for our three year authorization proposal. Beginning with fiscal year 1987, we request an authorization level of $24 million. This would increase to $25.4 million in fiscal year 1988 and to $27 million in fiscal year 1989. The amounts proposed are based on a staffing level of 347 full-time equivalent employees (FTE).

Over the last five years our budget requests have reflected an FTE staffing level of 347. This level is a sharp reduction from the approximately 400 staff the Board had in FY 1982. However, through elimination of non-essential activities and constant pressure for increased economy and efficiency of operations, we have maintained the 347 FTE level as the minimum staffing requirement to accomplish our basic legislative mandate. We continue to believe that level is essential.

In addition, we have proposed some amendments designed to cut back expenditures and better utilize staff capabilities. Our legislative proposals are attached, including statements of justification for each. I would only add here that these figures assume a continuation of current activities, with no plans for undertaking any additional or new responsibilities.

The Safety Board, since our last reauthorization hearing, has concluded a period marked by one of the most tragic—and for us one of the busiest—times in recent aviation history. And in other modes, a rash of train accidents in the summer of 1984 and increased Board emphasis on highway safety issues have stretched our resources thin.

Let me review some highlights of our activities to give you an idea of our workload.

AVIATION

Recently we issued the findings of a major, ten-month study into the potentially disastrous occurrences of runway incursions, or close calls at or near our nation's airports. It was prompted by the near collision of two DC-10s with a total of 501 aboard on a runway in Minneapolis in March 1985.

Our recommendations to the Federal Aviation Administration called for improved training for tower controllers, better control tower supervision and coordination, more precise and standardized operating practices by both controllers and pilots, and better runway and taxiway signs.

We followed with additional recommendations for Chicago's O'Hare International Airport after a near collision between two air carriers. Our recommendations called for extra controller coordinators during use of intersecting runways, and a suggestion that this idea be considered for other major airports.

Just lask week the Board met to determine the probable cause of the August 1985 crash of a Delta L-1011 in Dallas in which 135 lives were lost.

Windshear was a dominant factor in this accident, and it has prompted renewed demands for funds to implement state-of-the-art detection technology. The Safety Board is on record firmly in favor of a priority program to purchase the Doppler radar hardware for major terminal areas, while at the same time aggressively pursuing research and development of the software programs needed to automate the radar data presentation.

Since 1970, windshear has been identified as a cause or contributing factor in 17 accidents involving transport category airplanes. Six of these accidents were fatal and have accounted for 440 lives.

Aside from Dallas, other domestic accidents involving substantial loss of life included a Galaxy Airlines charter flight that crashed on takeoff from Reno's Cannon International Airport with 70 fatalities and a Midwest Express DC-9 crash following an engine failure after takeoff from the Milwaukee airport with 31 fatalities.

The latter accident investigation has taken up considerable Board resources due to emergent problems with the Pratt and Whitney JT8D engine on that and other aircraft. Our concern is heightened in view of the fact that the JT8D engine is used on two-thirds of the nation's commercial airline fleet, and we have issued several recommendations to the FAA on inspection and repair of the engine.

Foreign carrier accidents also contributed to our workload heavily as we participated in the investigations of a Japanese Airlines B-747 crash into mountains; a British Airtours B-737 engine failure and resulting fire at Manchester, England, and an Air India B-747 crash into the sea.

And, in our own back yard, a U.S. air carrier crashed in Gander, Newfoundland, taking the lives of 248 military personnel. The Safety Board's participation was extensive in all these diverse investigations, including the expenditure of $291,000 from our emergency fund to help salvage part of the Air India B-747.

In addition, a one-of-a-kind Safety Board activity involved a rigorous mountain climb by one of our field investigators to the crash site in the Andes of an Eastern Airlines B-727 that went down on the first day of 1985 en route to LaPaz, Bolivia. The site was reachable only on foot, and we organized this expedition in the hopes of recovering the flight recorders to assist in determining what happened. Unfortunately, the expedition was unsuccessful due to the amount of snow which covers the wreckage year-round, and the cause of the crash may never be known.

A particularly tragic year aside, not all aviation news has been bad. For instance, the commuter industry, in which every measure of exposure to risk has increased by about fifty percent since deregulation, has experienced a dramatic improvement in its safety record. While we can take some comfort in the numbers, problems unique to the commuter industry still persist, however, as we have learned from several ongoing commuter accident investigations. For example:

—a Bar Harbor Airlines commuter flight with child celebrity Samantha Smith on board during an instrument approach at Lewiston, Maine in which eight died;

—a Henson Aviation commuter flight on instrument approach into Shenandoah Valley Airport near Grottoes, Virginia with the loss of 14 lives;

—a Simmons Airlines commuter flight, operating as Republic Express, on instrument approach into the Alpena, Michigan Airport, causing the death of three.

A major issue that has surfaced in each of these investigations is pilot experience. In particular, the Board is concerned about the potential safety implications of decreasing pilot qualifications brought about by excessive turnover rates. For instance, last year major airlines hired almost 8,000 pilots, many taken from commuter airlines. As a result, it was not unusual for some commuters to experience a turnover rate of 25 per-

cent or more, and there have been reports of rates as high as 50 percent. Those hired as replacements on balance have much less experience with each other, their airplanes and their routes than major carrier flight crews.

This is not to say that commuter flight crews do not meet minimum FAA requirements; they do—but there is no question that their level of experience is considerably closer to the minimums than has been the case in the past.

Another serious Board concern with commuter operations was emphasized during the investigation of an accident involving a Provincetown-Boston Airlines commuter flight which crashed on takeoff from the Jacksonville, Florida airport in December 1984. Lacking sufficient clues which normally provide keys to the probable cause—weather, eye witness reports, air traffic control transmission, etc.—the Board's investigation went on for over a year and a half as our experts have had to resort to extensive testing, including full-scale tests and flight tests, to establish probable cause determination and to assure airworthiness of the airplane design.

In major air carrier accident investigations, we are provided key investigator's tools—data from the Cockpit Voice Recorders (CVR) and the Flight Data Recorders (FDR). This information most often provides the base upon which our investigators build in sorting out the factors leading up to a cause determination. In the PBA accident investigation, we did not have the benefit of either a CVR or FDR to assist us, and that exacerbated the cause-determination problem.

Installation of CVRs and FDRs is mandated for Part 121 air carrier operations, but for Part 135 operations the current requirements mandate CVRs only on turbojet airplanes certificated to carry ten passengers or more. There is no requirement for FDRs on Part 135 operations. This omission has been of considerable concern to the Safety Board for a number of years, and its significance will increase as more and more newer models of commercial aircraft, complete with all electronic display avionics, come into existence. These so-called "glass cockpits" will lose information on crash impact, depriving our investigators of vital information needed to direct the proper focus of the investigation.

The Board places its recommendations on additional and upgraded CVR and FDR requirements near the top of its list of safety objectives.

RAILROAD

Even though the Safety Board's railroad activities fall under the jurisdiction of another authorizing committee, the issues involved and recommendations made cut across the modes in terms of overall safety lessons learned.

For instance, the issue of efficient communications surfaced in several rail accident investigations, specifically the role of radio use in rail operations.

The Safety Board, in its report on the derailment of an Amtrak train on the Central Vermont Railway near Essex Junction, Vermont in July 1984, noted that although the Central Vermont Railway relied on communications via two-way radio, the Amtrak train did not have a compatible radio. Again, in its investigation of the head-on collision of two Amtrak trains in New York City in July 1984, the Safety Board noted that inadequate radio communication capability was a factor. Further, in February 1985 a Seaboard System Railroad freight train collided with standing freight cars at Robbins, South Carolina. The Safety Board concluded that inconsistencies of radio communication played a primary role in this accident also.

We are concerned about the railroad industry's apparent reluctance to adapt to the efficient use of modern two-way radio communications because of an increasing trend to dispatch trains by radio in non-signalized territories. Aside from the minimal federal regulations contained in 49 CFR 220, Radio Standards and Procedures, there is no standardized system delineating the use of radios, the content of communications to be transmitted and the format of transmission. The Safety Board is hopeful that the FRA will take timely action in this area as the Administrator has recently announced.

Several derailments on the New York City Transit Authority (NYCTA) system have served to highlight another rail safety problem—the safe evacuation of passengers under stressful situations.

Passenger evacuation was paramount in the Board's thoughts when it issued recommendations following the Washington Metropolitan Area Transit Authority (WMATA) train derailment in 1982 in which three passengers died. In response, WMATA has in-

stalled emergency handles near the center doors of each car which allow passengers to escape quickly if an accident or fire occurs. In addition, WMATA has posted emergency and evacuation instructions in each car to better inform the public on emergency evacuation procedures.

Emergency procedures in the rail rapid transit industry are as varied as the number of systems in operation. UMTA has published a guideline for emergency procedures. Unfortunately, several recent accidents revealed that some systems (Greater Cleveland Regional Transit Authority and Metro-Dade) were not aware of the UMTA guidelines. These systems had procedures that were inadequate and exposed passengers to long delays and the increased danger from contacting the "third rail"—the source of power to the trains. Recent accidents also have revealed that information regarding emergencies and evacuations has not been provided to the public riding these systems. Only two systems (San Francisco Bay Area Rapid Transit System and WMATA) provide a means for passengers to open the doors to exit the cars in an emergency.

Many of the problems identified in accident investigations, including emergency procedures and evacuations, have been the result of self-regulation and certification. In all but two states there is no safety oversight of rail rapid transit systems, and no established minimum safety standards other than those the systems establish for themselves. It is very difficult for a system to spend money on safety when there is a shortage of funds and service demands are high.

Too often accident investigations have demonstrated that the management of the rail rapid systems has failed to understand the critical importance to safety of such factors as adequate staffing and shift scheduling, formal classroom and on-the-job training programs, evaluation of personnel qualifications and experience, emergency procedures and drills, and close review and assessment of supervisory and organizational functions.

The best news in the rail mode recently is that a federal regulation outlawing alcohol and drug use by crews of the Nation's railroads has been promulgated. The Board first addressed this issue with a recommendation to the FRA in 1974. The FRA issued its long-awaited final rule last August. We believe implementation and enforcement of this rule will be highly cost-beneficial in terms of lives and property lost.

HIGHWAY

One of the most persistent and complex highway safety problems involves the mix of heavy vehicles and passenger cars, including the potential danger of the release in a populated area of hazardous materials. The Board recently issued a special study on one aspect of the problem—heavy truck safety. Truck driver licensing, qualifications and training were emphasized in this study.

The Board proposed a series of safety recommendations that included a call for a national license for drivers of heavy trucks and formal training as a major requirement for obtaining such a license. A second phase of this project will include in-depth investigations of about 150 accidents, including, among others, an examination of operational issues such as fatigue, alcohol and drug abuse.

A related problem on the highways involves the potential for disaster inherent in the shipment of Department of Defense (DOD) munitions. Two accidents highlighted the problems and focused the Board's attention on solutions.

The first accident occurred in August 1984 when a truckload of torpedoes overturned at a major highway interchange near the downtown area of Denver. Although no one was killed, local emergency response officials worked for hours to mitigate the hazards presented by the explosive shipment. Significantly, they were unable to reach the appropriate DOD personnel to determine the nature of the hazard.

The other accident occurred a year later near Checotah, Oklahoma and involved a collision between an automobile and a tractor-semitrailer carrying ten 2,000 pound bombs. After a fire engulfed both the semitrailer and the automobile there were three explosions. Of the original ten bombs, only two were found intact. Remarkably, no one was killed, but there was substantial property damage in the nearby community.

The Board's concerns growing out of these accidents include how the carriers are selected, how information on the cargo is disseminated and, once again, the qualifications, training and experience of the drivers.

The Board concluded that DOD's position that it needs no program for monitoring the safety of its hazardous materials shipments in transportation is unrealistic because it

relies upon the ICC and the DOT to enforce safety requirements. Major deficiencies in the Bureau of Motor Carrier Safety (BMCS) carrier safety audits and ratings have been identified by both the Congress and GAO. Further, ICC's "safety fitness determinations" are dependent upon data furnished by the BMCS.

In response to recommendations made in our report on the Denver accident, DOD has initiated efforts to assure that emergency response calls are responded to and that drivers are better trained in terms of cargo hazards and emergency response. Even with this assurance, it is worth noting that a recent accident on the Washington beltway again highlighted the problem of responding to emergency calls. Briefly, a tanker carrying a hazardous cleaning fluid—used to clean pipe at the Norfolk shipyard—began leaking on the beltway. The emergency personnel closed all the Interstate to traffic for about nine hours because no one could determine what material was being transported.

In addition to these activities, the Board continues its efforts to focus on unresolved highway safety issues such as alcohol and drug use, child passenger safety and school bus safety.

MARINE SAFETY

Tragedies that leave no survivors hardly are new to those who make their living on the sea, but the impact of such sinkings probably is greater today because of the sophisticated technology that is often employed to prevent them.

Two tragic marine accidents involving mobile offshore drilling units (MODU) occurred within a year of each other, and in both instances, all hands were lost.

One unit, the OCEAN RANGER, capsized and sank in a North Atlantic storm off Newfoundland in February 1982 with the loss of all 84 crewmembers. The Board found that seawater splashed onto a ballast control console, causing an electrical malfunction that disabled the automated system for control of ballasting. No one on board had been trained in use of the back-up manual system.

The other tragedy, the GLOMAR JAVA SEA, took place in October 1983 in a South China Sea typhoon, with the loss of all 81 aboard. In this instance, the Board concluded that structural failure had caused the accident, and that the crew's decision to continue to use all nine of its anchors had contributed to that failure.

In 1976 the MODU OCEAN EXPRESS capsized and sank in the Gulf of Mexico. The Board found that the MODU's chain of command was ineffective and that the barge mover was the only licensed crewman aboard. The Board recommended that the Coast Guard expedite the promulgation of regulations for personnel qualifications and manning standards for MODUs. Following the OCEAN RANGER and GLOMAR JAVA SEA accidents, the Board repeated its recommendation to the Coast Guard.

Although the Coast Guard had published an Advance Notice of Proposed Rulemaking in 1981 and a Notice of Proposed Rulemaking in 1983 which included proposed standards for personnel qualifications and manning, action to implement the proposed rules has been very slow. In October 1985, the Coast Guard published a supplemental notice of proposed rulemaking on these subjects. Interim final regulations for personnel qualifications are expected to be published before the end of 1986, and the manning standards will be published in the Coast Guard's Marine Safety Manual.

Implementation of these regulations and standards will significantly improve the safety of mobile offshore drilling units by insuring that an appropriate number of well qualified, licensed persons are employed to operate each unit.

Less progress has been made in obtaining licensing and training requirements for fishing vessel captains, even though over half the fishing vessel accidents in more than two years were due to loss of stability or failure to maintain the vessel's watertight integrity.

For example, the Board determined that the loss of two fishing vessels, the ALTAIR and the AMERICUS, in the Bering Sea was inadequate stability caused by improper loading by the captains and the addition of trawling gear by the company. The cause in part of another capsized vessel, LIBERTY, in Manasquan Inlet, New Jersey was its marginal stability that resulted from alterations made during its conversion from a fishing trawler to a scallop dredger. Contributing to the accident was the captain's poor handling of the vessel after it was struck by a large wave. Contributing to loss of life was the failure of the captain to direct the crew to don flotation devices or exposure suites.

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The typical captain of most fishing vessels has had no formal training in vessel safety, not even in stability. There is little incentive for a captain to seek such training, as the employer evaluates success on the basis of how many fish are brought in. The Board has recommended to the Coast Guard that it "seek legislative authority to require the licensing of captains of commercial fishing vessels," including a requirement that they demonstrate minimum qualifications in vessel safety. The Coast Guard did not concur with the recommendation and instead has elected to undertake a voluntary safety awareness/education program.

The Board continues to believe that minimum requirements are necessary to assure a higher level of safety on the seas.

PIPELINE SAFETY

Twin safety problems—accidental damage to pipelines due to excavation and gas companies' failures to shut down affected lines promptly—have plagued the pipeline industry for decades.

In South Charleston, West Virginia in October 1983 a backhoe, excavating for storm drain installation, punctured a three-inch main and pulled apart the valve that connected it to a four-inch main. Under 45 pounds of pressure, natural gas vented into the atmosphere from the trench where the stub main had been snagged, and from roadside valve boxes.

The local gas company personnel gave this priority attention, but gas also was migrating, undetected, under a blacktop parking lot and into a supermarket.

The gas crew could not find the broken valve on the four-inch main because it was seven feet underground and their map did not show this. A critical nearby valve—intended for immediate use for emergency shutdowns—also was covered with soil and could not be found.

The result was an inability to shut down gas rapidly, and the supermarket exploded. Fortunately, no one was killed in this explosion and fire.

The Board's report of this accident included recommendations to the gas company to review its system for monitoring continuing access to critical valves, to emphasize to supervisors the importance of knowledge of the exact location of the valves, and to train operating personnel to spot and report such shutdown difficulties as ground cover or missing pipeline markers. To date, we have received no response.

Just three months ago a contractor in Ft. Worth, relocating a 16-inch sewer line in preparation for an interstate highway project, snagged and ruptured a 2 ½ inch steel gas service line with a backhoe. The local gas company was notified right away and responded with two people on the site within 25 minutes. Once again, there was a situation where the gas company personnel concentrated their efforts on locating and shutting off the service line valve instead of also investigating for gas migration. An explosion followed which destroyed an unoccupied building containing almost 60 Cadillac automobiles, and caused possible structural damage to a nearby hotel.

The investigation into this accident is ongoing, and several recommendations may be forthcoming.

Another pipeline issue of increasing concern to the Board is the number and potential severity of pipeline ruptures due to corrosion. In April 1985 a natural gas pipeline explosion near Beaumont, Kentucky resulted in the loss of five lives. Four other explosions have occurred in that state in the past ten months, including a February 1986 pipeline rupture and fire in Lancaster, Kentucky. Corrosion was a factor in three of the four.

In the Beaumont accident, natural gas ruptured a 30-inch diameter pipeline, tore out 29 feet of the carrier pipe, blew apart 16 feet of a 36-inch diameter casing pipe, blasted an opening across a highway and cut out a pear-shaped crater approximately 90 feet long, 38 feet wide and 12 feet deep.

Several hours after the explosion and resulting fire, Safety Board investigators examined, measured and photographed the failed pipe in the crater and six pieces of the 30-inch diameter pipe. Severe, extensive external corrosion pitting was found in the area of the pipe casing. The wall thickness of the pipe had been reduced substantially by corrosion from the original specified pipe wall thickness.

In its report of the accident the Board recommended that the gas company conduct necessary inspections and tests to confirm or reject the existence of corrosion.

In response, the Board received a letter from the gas company indicating that, since the accident, inspections of the carrier pipe have been accelerated.

The most recent accident in Lancaster, Kentucky in February 1986 consisted of a natural gas rupture of a 30-inch diameter pipeline. It tore about 480 feet of pipe out of the ground, and exposed about 40 feet of an adjacent parallel pipeline. Three persons were injured and 77 persons were evacuated from the area.

The investigation revealed that the pipe had ruptured at the center of a 27-inch long by 10-inch wide oval-shaped corroded wall. The investigation is ongoing.

HAZARDOUS MATERIALS

The catastrophic industrial accident that took more than 2,000 lives in Bhopal, India, on December 3, 1984 was thousands of miles removed from the United States and its transportation system. But the safety issue it posed was an all too familiar one in transportation—classification of a highly toxic chemical according to its flammability, not its toxicity.

In December 1984 the Safety Board pointed out in a letter to the Department of Transportation that methyl isocyanate (MIC), the toxic chemical released at Bhopal, could be shipped by rail in the United States in the least protected tank cars under DOT's existing classification of hazardous materials. Although Union Carbide, the only U.S. manufacturer and shipper of MIC, chooses to ship it in double-walled, insulated, stainless steel cars, and thus fully controls its distribution, this is not true of other materials which pose similar toxic threats in the event of a transportation emergency.

The Board believes that DOT's hazard identification and classification system must identify completely the hazards posed to life and health by each material during both normal transportation and emergencies.

The Board noted that of five safety recommendations it had made over a nine-year period, one was particularly appropriate in the aftermath of Bhopal. That recommendation urged a review of Class A poisons and specialty products to determine if their toxicity hazards were sufficient to require that they be transported only in DOT 111 tank cars with head shields and thermal insulation. The Federal Railroad Administration promised such a review, but in completing a rulemaking in January 1984 it had not assessed the hazards to public safety of the toxicity of transported materials.

Madam Chairman, I have given you some idea of just how busy we have been. As you can well imagine, many more activities are in progress that I have not mentioned. We believe our resources are being utilized to their fullest capabilities and have instituted economies wherever possible and practicable.

In addition to our normal activities, the Board responds whenever possible to outside agency requests for assistance in accident investigations. An example of routine requests would include computer graphic work for military aircraft accident investigations and CVR/FDR readouts.

Recently, however, we have responded to requests for more in-depth assistance, such as our work in looking into the cause of a number of Army Black Hawk helicopters and problems associated with the recent explosion of an Air Force Titan missile.

The most publicized use of our resources in outside investigations was our participation in the investigation of the NASA Challenger space shuttle accident wherein we played an instrumental role in the wreckage recovery and reconstruction portion of the investigation.

We regard these outside requests as testimony to the credibility of the Board and the professionalism of the staff, and we are proud to include them in our accomplishments. These unforeseen activities are not undertaken without significant strain on our resources, however, and future requests must be considered on the basis of current resource capabilities. Even though NASA has offered to reimburse the Board for salaries and expenses, the loss of expertise, even for a short period of time, is felt in an agency of our modest size.

Should circumstances demand, we would welcome the opportunity to contribute our expertise, but any significant increase in such activities could put an unacceptable strain on our resources.

That concludes my formal statement, Madam Chairman. I would be pleased to respond to questions.

Senator KASSEBAUM. Our next witness is Mr. Frank Jensen, president of the Helicopter Association International.

If it would be all right, may we take two of you at the same time? Mr. Baker had to leave.

Mr. Stephen Jordan, president of Jordan Associates, Incorporated.

Mr. John Baker, president of the Aircraft Owners and Pilots Association, had another appointment and had submitted his statement for the record.

Mr. Jensen, it is a pleasure to welcome you.

STATEMENTS OF FRANK L. JENSEN, JR., PRESIDENT, HELICOPTER ASSOCIATION INTERNATIONAL; AND STEPHEN JORDAN, PRESIDENT, JORDAN ASSOCIATES, INC.

Mr. JENSEN. Good afternoon, Madam Chairman, gentlemen. I am Frank Jensen, President of the Helicopter Association, International or HAI. To make the record straight, we are an American organization. We do have 1,000 corporate members in 41 countries, but 85 percent of our membership is from the good old USA, so I do not want the name to distract.

My written testimony has been submitted for the record, and with your permission and in the interest of time, I will summarize in about three minutes.

HAI is heavily committed to safety. Therefore, we strongly support the reauthorization of the National Transportation Safety Board and the enlargement of its authority to include the investigation of all non-military accidents.

We also support the reappointment of Chairman Burnett, whom we greatly respect and admire.Public aircraft now comprise 20 percent of the non-military helicopter fleet of the United States. The safety record on these 2,000 publicly owned aircraft does not exist because public aircraft do not come under the jurisdiction of the NTSB or, for that matter, the Federal Aviation Administration

Now, our concern on this matter stems from the fact that we and FAA and certain others keep the statistics on the civil fleet. However, there are no statistics on the public aircraft.

These aircraft come from many places. Some are purchased outright. Some come from military surplus and many, increasingly large numbers, are confiscated drug use aircraft which frequently do not have any kind of records to substantiate their history.

Also, these aircraft, once they come in the hands of the public service authorities, State government, local, are operated with pretty near complete autonomy and they are used for a wide variety of missions, including frequently the transport of VIPs, including—it might be anybody that may be transported in these aircraft.

Most of aviation is tightly regulated by the Federal Government and we feel that is correctly so. We would like to see these uniform high standards extended to all non-military aircraft. Therefore, HAI favors the reauthorization of the NTSB with expanded authority to ensure that all segments of the civil helicopter industry, whether crew or passenger,

enjoy the same high level of safety. And HAI would be very pleased to assist in any way possible.

Senator KASSEBAUM. Thank you very much. I think we might just address a few questions to you before we go on to Mr. Jordan's testimony because I did not quite catch the figures you said at the beginning. You said there were 2,000 rotocraft?

Mr. JENSEN. Public?

Senator KASSEBAUM. Public.

Mr. JENSEN. Aircraft.

Senator KASSEBAUM. That is non-military.

Mr. JENSEN. Non-military, non-commercial.

Senator KASSEBAUM. And of those, how many are involved in accidents. Did you give the figure for that?

Mr. JENSEN. We do not have accident statistics for those 2,000 aircraft because they are not kept anywhere

Senator KASSEBAUM. What do you anticipate as a result of what the investigations might show in these crashes? Is there sort of an answer you might be seeking to the question of what one would find from this investigation?

Mr. JENSEN. Madam Chairman, I wish I could give an intelligent answer to that, but it really is a great unknown. We have intuitive feelings that many of the public authorities do maintain their aircraft in high standards. They do voluntarily, some of them, comply with the FARs. But they have such autonomy and no oversight, that we really do not know.

Senator KASSEBAUM. This, of course, would be an additional cost to the NTSB. You just heard us talk about budgetary constraints in the reauthorization testimony. Do you feel that it is important enough to add additional money in the budget for this type of investigation?

Mr. JENSEN. Yes, Madam Chairman, we do. I heard Chairman Burnett use the figure of 15 additional people, and I realize that was just kind of an intuitive number that he used, but that expense could certainly be offset if it prevented one or two fatal accidents in the public sector.

Senator KASSEBAUM. Now, at this juncture there is no supervision over the non-military rotocraft of any sort. Is that correct?

Mr. JENSEN. Other than those which must comply with the Federal Aviation Regulations. We are speaking of the non-military, the public aircraft.

Senator KASSEBAUM. Senator Exon, do you have any questions?

Senator EXON. Thank you, Madam Chairman.

Mr. Jensen, you used the term transportation of DIVs; is that right? What is that?

Mr. JENSEN. Of VIPs, Very Important Persons.

Senator EXON. Oh, VIPs.

Mr. JENSEN. Sorry I did not speak clearly, sir.

Senator EXON. I don't know what that is.

Let me ask you a question. Do foreign helicopters come into the United States very frequently?

Mr. JENSEN. You are speaking of foreign manufactured helicopters?

Senator EXON. No. I am talking about flights between Canada and the United States and Mexico and the United States.

Mr. JENSEN. My feeling is that is very seldom, that it occurs very seldom.

Senator EXON. Are there a substantial number of helicopters from your perspective used for illegal drug trafficking?

Mr. JENSEN. Sir, I have sat in on a number of briefings by the Drug Enforcement Agency and other Federal authorities and I have seen pictures of every kind of aircraft you can imagine except the Goodyear blimp being used to haul drugs and contraband, and so I think the answer has to be yes. Certainly helicopters would be suitable.

In fact, I was visiting in Phoenix last week and saw a small helicopter that had just been confiscated from drug haulers.

Senator EXON. Are the helicopters that are being used in that kind of illegal activity for the most part surplus military helicopters? Or are they helicopters that come through as directly purchased by private party from a manufacturer or dealer?

Mr. JENSEN. Sir, I would not have any way to answer that question.

Senator EXON. The sum and substance is that you generally support, then, what the National Transportation Safety Board is doing. But if you were in charge, you would like to see some additional personnel added to their budget. Is that a fair statement?

Mr. JENSEN. Yes, Senator, I would.

Senator EXON. Thank you, Mr. Jensen.

Thank you, Madam Chairman.

Senator KASSEBAUM. Mr. Jensen, as president of the Helicopter Association, have you as an association really attempted to check some of the accidents as far as making some estimate as far as the maintenance or any piloting error or this sort of thing?

Mr. JENSEN. Not to any specific degree. We do maintain surveillance of accidents which are brought to our attention, but we have a small staff and we are not capable of——

Senator KASSEBAUM. But you feel as an association, it would enhance the safety aspect and your own ability to be able to offer some security in this area if NTSB could make accident investigations.

Is that the purpose of your request?

Mr. JENSEN. Yes, it is. Very significantly. Probably one of the fastest growing segments of the helicopter industry today is the public service, and emergency medical service is a large segment of that where helicopters are used to transport trauma victims from the scene of the trauma to the medical facilities.

That particular segment has a very high accident rate, and we have specifically held seminars—we are having another one in February—to try to address that problem and make recommendations for ways to reduce this accident rate in EMS helicopter use. That is one of the reasons why we feel strongly that the NTSB should investigate these accidents.

Senator KASSEBAUM. Thank you very much.
[The statement follows:]

STATEMENT OF FRANK L. JENSEN, JR., HELICOPTER ASSOCIATION INTERNATIONAL

Good afternoon. I am Frank L. Jensen, Jr., President of Helicopter Association International testifying on behalf of more than 1000 member companies who manufacture, operate, repair, maintain and pilot civil helicopters in the public and private sectors of aviation.

The aviation industries in this country, particularly helicopter applications, are undergoing dramatic change, and being cognizant of that change, the HAI supports the authorization and recommends an enlargement of the National Transportation Safety Board (NTSB) authority to include investigation of all non-military accidents.

This change in aviation, I referred to, includes a rapidly growing public non-military sector which, according to 1984 FAA reports, now accounts for approximately 2,000 publicly owned helicopters, or about 20 per cent of the non-military helicopter fleet. During that year—considering delivery of new machines, surplus military aircraft dispersed to the non-military sector by the Forest Service, and excess military aircraft leased to public entities—more helicopters moved into the publicly owned sector than moved into the commercial, corporate and privately owned sector.

"Public aircraft" also includes all those civilian machines leased to government entities. At this time we cannot give you an accurate count of them, particularly since their numbers can fluctuate hourly. For example: The Office of Aircraft Services reports that government use of civilian aircraft under short-term contract or rental agreement is the fastest growing segment of their business. Thus, we have a sizeable and increasing segment of non-military aviation in the U.S. that presently is outside the NTSB jurisdiction.

As this public helicopter segment grows, many safety issues arise. (1) Who conducts unbiased investigations of accidents? (2) Who documents and maintains a data base on trends in accident statistics? (3) How do we control the quality or certification of the valuable components, such as engines and transmissions of surplus military helicopters, and prevent these from turning up on helicopters used in commercial passenger carrying operations? (4) Do these unregulated aircraft operations impact or alter the highly regulated civil safety standards? NTSB jurisdiction over all these aircraft would improve safety and provide additional data in many high-risk operations, there by raising the overall safety standards in this country.

The NTSB has provided valuable services to the aviation industry and to the public who use civilian aircraft, and we believe that it is vital that this independent body continue its investigative work. Their data collection and analytical capability should be expanded to serve the aviation public even more effectively as we transition toward more sophisticated aircraft with advanced electronic systems, maintenance systems with computer monitors, and improved airframe structures which offer safety and reliability.

HAI strongly supports an expanded NTSB authorization and respectfully requests that your actions assure that all segments of the civilian helicopter industry - whether crew or fare-paying passengers - enjoy the level of safety which we, the professional helicopter industry can provide. HAI would be pleased to assist in implementing the expanded jurisdiction should this legislation pass.

Senator KASSEBAUM. Mr. Jordan, it is a pleasure to welcome you.

Mr. JORDAN. Thank you, Madam Chairman, Senator Exon.

My name is Stephen C. Jordan and I am president of Jordan Associates, an aviation accident investigation and insurance claims adjustment business. It is my unhappy duty to speak to the negative this afternoon.

The purpose of my appearance is to outline a severe problem of my industry caused by the misinterpretation by NTSB management and James Burnett of the procedures for National Transportation Safety Board accident investigations and to suggest steps toward a solution.

The interests of my industry and of general aviation at large have been ill-served by the NTSB. Details are included in my written testimony.

Valuable assistance has until recently been freely offered by industry and freely accepted by NTSB. Such assistance has been of inestimable value to all concerned, not least to the taxpayer. The quality of the NTSB's product has been greatly enhanced and its limited resources have been made available for other functions.

Most manufacturers and all insurers employ accident investigators either directly or on a case-by-case basis. These investigators help address the responsibilities of their employers by gathering factual information, and they have assisted the NTSB investigators as required.

Operators and manufacturers, and their insurers must promptly learn everything possible about aviation accidents in order to determine what actions are necessary to correct defects and to address their legal responsibilities, if any.

Moreover, insurers are exposed to severe penalties in many jurisdictions if they fail to perform a prompt, full investigation.

Last year, then NTSB Chairman James Burnett directed that no one who is not a so-called party to an investigation would be permitted even to observe it. He further directed that no representative who was not a full-time employee of a manufacturer would be appointed to be a party to an investigation.

The result in general aviation has been chaos.

A corrosive atmosphere has developed between industry and NTSB degrading the cooperative spirit previously existing between them. Most insurers have withdrawn their support for investigations.

Litigation against NTSB is increasing. The quality of the NTSB's products is decreasing. Professional air safety investigators have, without the slightest justification, suffered substantial hardship.

Regarding observing of investigations, one of the oldest of bureaucratic evasions is relied upon by management and by Mr. Burnett in justification of this prohibition. Whatever is not specifically allowed by regulation must be prohibited. This is capricious, arbitrary and probably unconstitutional.

The directive that manufacturers may be represented only by employees is based upon the irrational assumption that only employees are technically qualified on the product involved. This implies the converse: that no non-employee would be qualified. Doubtless this includes the qualified employee who leaves the payroll and therefore becomes unqualified. That is absurd.

Although management and Mr. Burnett claim that NTSB must prohibit parties from using information from investigations to prepare for litigation, it is common knowledge in the industry that they do make such use. Any claim to the contrary is disingenuous and designed to mislead.

Such use of information is not reprehensible, nor should it be any concern of NTSB or Mr. Burnett. I only ask that all who have a legitimate interest have the same opportunity to obtain information.

NTSB investigations in the general aviation field are often outstanding for ineptitude and careless disregard of the simplest rules for preservation of evidence and for the rights of those whose interests are affected. Evidence has been beaten with a hammer, incompetently handled, and otherwise destroyed or lost.

The NTSB's products in general aviation is considered by knowledgeable people to be so unreliable that they despair of learning anything useful from it.

Mr. Burnett will not even acknowledge the existence of a paragraph in part 831 of the procedures which requires that persons subject to interrogation shall have the right to counsel or representation.

The legislature can alleviate this situation by first amending the relevant statutes so that the interests of all are protected; second, resolving that only proven leaders who are technically qualified will in the future be confirmed as NTSB members; and third, rejecting the nomination of James Burnett.

The flying community and the public at large will benefit. And I am prepared to assist your staff with specific suggestions.

Senator KASSEBAUM. Thank you very much.

Mr. Jordan, I would like to ask how, prior to the rule change, would you usually be involved in an investigation?

Mr. JORDAN. I would be called upon either by a manufacturer or by an insurer to conduct an accident investigation.

Senator KASSEBAUM. About how many would you do prior to the change? And have you done any since?

Mr. JORDAN. About 30 percent of my business which at that time was based in Salt Lake City, UT involved air safety investigations for manufacturers. That portion of my business is completely gone. I have received no further assignments of that nature.

Senator KASSEBAUM. Well, how does one go about collecting information for insurers and manufacturers?

Mr. JORDAN. It is done essentially in the same manner. It does not matter who the client is. One simply attempts to gather all the available factual information that he possibly can and compile it and report it to the client.

Senator KASSEBAUM. That is what he would do now and that is, of course, what he did before as well.

Mr. JORDAN. Yes.

Senator KASSEBAUM. You are maintaining, however, though, that now it is more difficult to be there first-hand for some observation at the time of the investigation?

Mr. JORDAN. That is correct. I might point out that it is vital to be on the scene when the investigative work is being performed because evidence is often destroyed or lost in that process.

Senator KASSEBAUM. You heard Chairman Burnett's testimony that it becomes inconsistent as there are those who are able to be there, those who are not. It becomes very much a part of litigation, and is that really the role that should be played at that particular point in an accident investigation? How would you answer that?

Mr. JORDAN. I think that Mr. Burnett was directing his remarks primarily toward those who are parties to the investigation. It is not really necessary, or was not previously necessary to be a party to the investigation to gather factual information.

Now, it has become difficult and in many instances impossible to do so because one is, as the phrase goes, kept outside the ropes.

Senator KASSEBAUM. But that information that one would gather, for instance you yourself, would be information that would be very valuable to a party. Is that not correct?

Mr. JORDAN. Oh, yes.

Senator KASSEBAUM. Whether a person was there as a party or not, obviously the material and evidence they were gathering could be very valuable in case of litigation.

Mr. JORDAN. That is correct. And it is used in the course of litigation. I do know that there is a statement that the NTSB has required investigators to sign which in effect indicates or states that they will not use—parties will not use the information gained in that investigation in the course of litigation. And that simply is not the case.

It is almost always used to prepare for litigation.

Senator KASSEBAUM. Well, I do not understand all of this well enough, so forgive me for sort of going back through. I think it is an interesting point. All of the records taken during an investigation would be made available, of course, during any course of litigation. Is that not correct?

Mr. JORDAN. Not all of them. In the course of compiling information for the factual report, NTSB investigators often will delete information which they mistakenly believe should not be included. Furthermore, the FAA will often edit material they supply to the NTSB.

Senator KASSEBAUM. Investigation records could be subpoenaed, though, could they not?

Mr. JORDAN. I believe that an NTSB accident report itself, there is some legal question in various jurisdictions whether an NTSB report itself—the document itself—can be entered into evidence in litigation.

Usually it has been my experience at least, and I may be a little out of date, that the usual case is that the NTSB investigator who compiled that factual report will be called upon to testify as to the contents of that report, but he cannot express any opinion as to what that report means.

Senator KASSEBAUM. Well, that makes sense.

Mr. JORDAN. It is fair enough.

Senator KASSEBAUM. Then let me ask you: Your concern is one not only that you are shut out of being able to be a part of the investigation process, but also that there are those who are parties to the accident who can be. You feel that is unfair where there is that delineation of who can and who cannot be. Is that right?

Mr. JORDAN. That is correct. There have been occasions when I myself have been a party to an investigation—this goes back prior to last August—where I have seen evidence detroyed in the course of the field investigation. This is not deliberate. It is an inadvertent kind of thing. I can give you an example if you like.

Senator KASSEBAUM. Well, we are not asking you for that, but are there any alternative solutions to this? One might be just to not have anyone there other than the investigation team.

Mr. JORDAN. The NTSB employees you mean?

Senator KASSEBAUM. Yes. Who are part of the investigation.

Mr. JORDAN. That is one way to do it. And that is essentially the way it is operating now with the exception, of course, that the investigator in charge will often appoint someone from a manufacturer, for example, to be a party to the investigation.

This person then obtains information which is used to prepare for litigation and other people who have legitimate interests do not have the same opportunity. What I am simply trying to work toward is an opportunity for everyone to have access to the same set of facts.

I have heard it said that everyone should sing out of the same songbook.

Senator KASSEBAUM. Or no one at all.

Mr. JORDAN. That would be worse, I think. Unfortunately, there have been instances where evidence which was sequestered by NTSB, taken into its custody for further examination, has been lost or destroyed or otherwise mishandled and its value as evidence, factual evidence, has been lost entirely.

There are multitudes of examples.

Senator KASSEBAUM. Senator Exon.

Senator EXON. Thank you, Madam Chairman.

Mr. Jordan, at what period did you start running into difficulty in your examination of aircraft accidents? Was it two years ago or eight years ago? When did this rulemaking process take place that, from your testimony, I assume was under the auspices of Mr. Burnett; is that right?

Mr. JORDAN. My testimony, sir?

Senator EXON. Your testimony indicates that you are concerned about the fact that you do not have as much right of entry and becoming a part of an investigation of aircraft accident.

Has that always been the case, or was there a period of time when you could go in and make all your investigations and then the rules were changed and you could not thereafter?

Mr. JORDAN. Well, the rules, the procedures under part 831 have not changed at all. The interpretation of the procedures has changed.

Senator EXON. When did the interpretation take place?

Mr. JORDAN. It first came to public notice in a letter from Chairman Burnett to the General Aviation Manufacturers Association, I believe, a year ago this month.

Senator EXON. About a year ago then; is that right? That is what I am trying to get to.

Mr. JORDAN. Okay.

Senator EXON. Now, preceding that time, a year ago, did you have pretty much free access? Did you go right—as soon as you were retained—in and you were taken in as a part of the investigation? Is that the way it used to work?

Mr. JORDAN. If I was retained by a manufacturer, I would often be appointed a party to the investigation.

Senator EXON. By whom?

Mr. JORDAN. By the investigator in charge.

Senator EXON. I see.

Mr. JORDAN. If I was retained by an insurer, under the rules of course I could not be a party to the investigation. But I was usually allowed to perform my functions, so long as it did not interfere with or impede the, you might call it, the official investigation.

Senator EXON. In other words, you stayed out of their way; is that right?

Mr. JORDAN. Sure. In fact, I am not the only one who is involved in this.

Senator EXON. That was my next question. How many people are similarly situated to you?

Mr. JORDAN. I would say those working as independent businessmen and directly for insurers would number less than 100, perhaps 80, 90.

Senator EXON. And let me ask you this question. Do you perform these types of investigations just on airline accidents or crashes? Or do you do it for truck accidents and other surface transportation as well?

Mr. JORDAN. Only in general aviation.

Senator EXON. Only in general aviation?

Mr. JORDAN. That is correct.

Senator EXON. Do you have people that are in your business that do similar investigations after a major truck accident or a bus accident?

Mr. JORDAN. I am sure there are, but I am not familiar with that aspect of activities.

Senator EXON. The question I was getting at was can you enlighten the members of this committee as to whether or not the same general rules apply to investigators that may be interested in automobile accidents, truck accidents, or bus accidents?

There must be people that perform the same service that you do for aviation accidents. My question is, do they have the same difficulty as you are experiencing with the investigation of aircraft accidents?

Mr. JORDAN. I am frank to say I do not know. If the NTSB were in charge of that investigation, I am sure that they wold have the same problem.

Senator EXON. How long have you been in this business?

Mr. JORDAN. Fifteen years.

Senator EXON. So for the first 14 years of your business, you did not have any complaint, and it was only a year ago now when these new interpretations of rules were brought into play that you began to have difficulty?

Mr. JORDAN. That is correct.

Senator EXON. And what has happened in the last year on these accidents? They just do not allow you anywhere near the accident?

Mr. JORDAN. That's about the size of it, yes; whereas previously my colleagues and I would be allowed on site to document the facts of the accident and to monitor other investigative procedures such as an engine disassembly that might be carried out later.

Now we are not allowed to do so. Only parties are allowed to do so and again, I must say it is not necessary to be a party to gather useful information.

Senator KASSEBAUM. Do you mean a party or an employee?

Mr. JORDAN. I am using the term "party" as it is used in part 831, which would be someone who is qualified to be a party and is appointed to be a party.

Senator EXON. Well, let's say that certainly the police are allowed to be there and be a party to this investigation, are they not?

Mr. JORDAN. I have never known of a case in my experience where a police department has been appointed a party to an investigation. Usually they are concerned only with security of the site.

Senator EXON. Well, what about immediately after a crash, there are people or bodies there. Certainly there has to be an awful lot of people to come in there on rescue efforts. Firemen go there to put out the fire, don't they? You must have seen firemen there.

Mr. JORDAN. Yes.

Senator EXON. What do the NTSB officials do? Do they scurry those people out of there as quickly as they can?

Mr. JORDAN. I think generally experience has shown that fire rescue security police people are very cooperative in trying to maintain the integrity of the evidence and they will ordinarily clear the site long before NTSB ever arrives on the scene, and just keep people away from it until the investigator in charge arrives, which is in my view quite proper.

Senator EXON. But then once the NTSB people arrive, they secure pretty much the area to their people and their people only; is that correct?

Mr. JORDAN. That is correct.

Senator EXON. And you are excluded?

Mr. JORDAN. That is correct.

Senator EXON. Thank you for your testimony. I just wanted you to clarify your position.

Senator KASSEBAUM. Thank you very much, Mr. Jordan and Mr. Jensen. We appreciate your testimony and its contribution to helping understand all of the facets of the operation of NTSB. We appreciate it.

[The statement follows:]

STATEMENT OF STEPHEN C. JORDAN

My name is Stephen C. Jordan. I am President of Jordan Associates, Inc., of Annapolis, Maryland and Salt Lake City, Utah.

I hold a commercial pilot's certificate, with single and multiengine and instrument ratings, and am the owner of an aircraft.

I am a graduate of the aviation accident investigation course offered by the Safety Center of the University of Southern California. I regularly attend the Air Law Seminar held annually by Southern Methodist University in Dallas.

Among the organizations of which I am a member is the International Society of Air Safety Investigators. Until recently, I was an officer of the Rocky Mountain Chapter.

For about 15 years, I have been involved in general aviation accident investigations, both for insurers and for certain manufacturers. In the course of those activities, I have investigated hundreds of accidents. I have often been appointed a party to such investigations.

NTSB

The NTSB is subject, in its accident investigations, to Title 49 U.S. Code, Chapter VIII, Part 831, which sets forth the procedures governing such investigations.

In the course of its work, the NTSB has in the past received assistance from industry. Such assistance has been both financial and investigatory in nature.

Financial assistance has most often been in the form of payment of the whole or a part of the expense of wreckage retrieval, transportation to the accident site, scientific examination and testing, and storage of wreckage.

Assistance in the investigation has been rendered in the form of scientific tests as mentioned, as well as other fact-gathering functions.

This assistance, freely offered and freely accepted, has been of inestimable value to the aviation community and the taxpayer. The former because it has enhanced the quality of the NTSB's product, and the latter because it has helped to hold down NTSB's budgeting requirements. Industry and its customers have also benefited, as outlined below.

Industry

The industry with which I am here concerned is the general aviation industry and an important part thereof, the insurers who underwrite the risks of manufacturers and operators of aircraft.

Most manufacturers and all insurers employ persons whose functions include factual accident investigations. Their purpose is to address the responsibilities of their organizations, and to assist the NTSB.

The responsibilities of a manufacturer after an accident are two-fold: To learn all that it can of the facts and circumstances of an accident so that any product defect disclosed can be corrected; and secondly to take appropriate action to address its liabilities, if any, to those who have suffered losses as a result of the accident.

The insurers have similar responsibilities, but their duties go even further. In most, if not all, jurisdictions an insurer is required by law to investigate the facts and circumstances of an accident fully, fairly and in a timely manner. If it fails to do so, it may be subjected to severe penalties.

The problems

James Burnett, as Chairman of the NTSB, mandated two new procedures last year which have severely damaged industry.

He directed that no access, even for observation, be allowed at an accident site or subsequent investigative activities to anyone who is not a "party" to the investigation, as that is defined in Part 831.9.

Moreover, he directed that no representatives of a manufacturer shall be appointed a "party" who is not an employee of that manufacturer.

These directives, separately and together, have had the following results:

First, the development of corrosive atmosphere which has degraded the cooperative spirit previously existing between the NTSB's investigators and those employed by private industry.

Second, withdrawal by most insurers of their support for investigations.

Third, a group of dedicated air safety professionals has, without a hearing or opportunity for defense, been arbitrarily caused substantial hardship.

Fourth, litigation against the NTSB has begun to increase. I respectfully refer you to *Graham* vs. *NTSB et al.*, Ninth Circuit Court of Appeals case number 86-1530, which involves NTSB's interference with the right of the owner-operator of an acci-

dent aircraft to have a representative present to document an investigative procedure. I understand there are other cases in the courts, involving spoliation of evidence and destruction of valuable property.

Fifth, further degradation of the quality of the NTSB's product.

The controversy

The present controversy between the NTSB and industry is as follows:

As to observers, persons and organizations which have perfectly valid reasons for desiring to observe and document evidence discovered during an investigation are forbidden access to accident sites and investigative procedures. NTSB management attempts to justify this on the ground that Part 831 does not include a provision for observers. This is interpreted to mean that "observing" is prohibited. I suggest that such is the bureaucratic mind at work: Whatever is not specifically allowed must be prohibited. No tyrant could state it better. It is unfair, discriminatory, capricious and irrational.

Regarding representation of manufacturers, we move into a subject which requires careful consideration because of the injustices which have in the past occurred, and which will continue if corrective action is not taken by this Subcommittee.

The subject has two aspects: First, the question of who will represent the manufacturers during the accident investigation.

NTSB management directed in July 1985 that no one could be a party to an investigation as a manufacturers representative unless that person was a full time employee of that organization. Previously, persons such as I would be retained on a case-by-case basis to perform air safety investigations and assist the NTSB investigator as a party.

NTSB management attempted to justify this caprice by claiming, first, that some non-employees "may have had or may have represented interests beyond the Safety Board investigation". Second, that some non-employees "have not had in-depth knowledge and expertise of [sic] the product equivalent to that of an employee of the manufacturer". See Chairman Burnett's July 9, 1985 letter to the General Aviation Manufacturers Association.

I will dispose of the arguments in order:

As for the objection to alleged representations of interests beyond the Board's investigation, this is simply disingenuous. It is well known by NTSB investigators and everyone in industry that the Federal Aviation Administration (which is considered to have a right to be a party to any investigation) and manufacturers customarily make use of inside information obtained during accident investigations for the purpose of preparing for litigation. Protestations to the contrary are simply an attempt to mislead.

I have no objection to such use of information if the representative involved is also performing a useful investigative function, and, especially, if everyone with a legitimate interest in the facts of the accident has the same access to them.

This seems to be an appropriate point to state that it is no business of the NTSB to decide who has a legitimate interest in an accident investigation. In fact, the NTSB is not competant to make such decisions.

As for the allegation that non-employees have insufficient knowledge of the product: It is true that no one wants unqualified persons to engage in aircraft accident investigations. I suggest that NTSB management should have cleaned its own house before interfering with the contractual relations of manufacturers and professional investigators.

More to the point, the mere fact of employment by a manufacturer is no evidence whatever that any particular individual has an indepth knowledge of that manufacturer's product. I am aware that certain persons who were considered by NTSB unqualified under the criteria suddenly became technically qualified as soon as they were hired by manufacturers. This implies the converse, namely that a technically qualified person would immediately become technically unqualified upon leaving the employ of a manufacturer. This is illogical and absurd on its face.

NTSB management evades the issues raised by industry by repeating to the point of exhaustion that only certain entities can be designated parties to an investigation, and that claimants and insurers are specifically excluded by Part 831.9 (c). The fact is that it is unnecessary to be a party if one has the same access to information as a party.

NTSB management claims that it must maintain a distance from litigation and that it cannot do so if it must consider "all the due process requirements". See Chairman Burnett's interview at page 67 of the March 1, 1986 issue of International Aviation News. It is clear that NTSB does not wish to become involved in damage

litigation, even though such is occurring at an accelerating pace. I agree that it should not.

Unfortunately, the quote above also implies clearly that NTSB management is not concerned with preserving the interests of those who must take into account the probability of litigation. This is in fact something which occurs frequently as NTSB loses or destroys vital evidence.

Destruction of evidence

Examples of loss and destruction of evidence are abundant. Some examples are:

After a recent accident in New Mexico, an NTSB investigator attempted to remove certain covers from an engine, using a hammer instead of a screwdriver as the designer intended. This resulted in severe damage to the engine and, I am informed, litigation against the NTSB.

The grossly incompetent mishandling of important metallurgical evidence. The insurer was, no thanks to the NTSB, able nevertheless to have the samples examined by a qualified scientist, whose report was used by NTSB instead of the contrary report of its own laboratory.

The burial, using a bulldozer, of aircraft wreckage at the direction of an NTSB investigator, before anyone else had an opportunity to examine it. Wreckage is often sequestered by NTSB, then abandoned to thieves and curiosity seekers.

A certain product, suspected of involvement in a fatal accident, came into the NTSB's laboratory for examination only after it had been examined by the manufacturer. It had been disassembled and was useless as evidence. The manufacturer never responded to repeated requests for a report of its results.

Part 831

Part 831 is cited by NTSB as authority for what they do. But they are very selective in what they will discuss.

First, they never discuss the fact that Part 831 simply sets forth procedures for NTSB to follow. Only 831.8 sets forth NTSB's authority over anyone, and that only requires production of information. 831.10, regarding access to wreckage and records, states that only "participants" (used interchangeably with "parties") shall have such access. It is arguable that this directs NTSB personnel to forbid such access, and does not require that anyone obey the restriction. The fact that such restrictions are customarily obeyed is not relevant.

Second, NTSB mangement evades at all costs even an acknowledgment that Part 831.6 exists. And no wonder, since it is entitled, "Right of Representation". It is only one sentence, as follows: "Any person interrogated by an authorized representative of the Board during the field investigation shall be accorded the right to be accompanied, represented, or advised by counsel or by any other duly qualified representative." The outline of an accommodation is contained in this sentence.

Quality

The quality of the NTSB's aviation accident reports is inconsistent, and often poor. I know of NTSB investigators who, because of the practices of management, have given up trying to maintain a high standard of quality. In fact, NTSB reports are considered by knowledgeable people to be on the whole so unreliable that they are often not even consulted for any significant information.

The solution

The NTSB is well aware that information developed in an accident investigation is often used in litigation. Management takes the position that this fact should not be a consideration in the performance of its function. Management is quite correct.

By the same token, NTSB must no longer be permitted to interfere with the lawful functions of other investigators, or to mishandle and destroy evidence, or to suppress information, as it has done heretofore.

Two relatively simple actions will help alleviate the present distress:

First, this Subcommittee should resolve that, in the future, only technically qualified nominees, who are also able leaders, will be approved as members of the NTSB. Recent history displays some glimmers of hope in this regard.

Second, relevant regulations and procedures, especially Part 831, should be amended so that all who have reason to do so are accorded an opportunity to document the evidence of an accident before it is subjected to the hazards of loss or destruction. NTSB's objections notwithstanding, this can be done in such a manner that it can perform its functions without impeding, or being impeded by, other investigators.

The result

Implementation of these suggestions will, I am convinced, lead to an improvement in the morale of NTSB personnel, improvement of the quality of the product, reduction of litigation against the NTSB, and more economical operations, with resultant savings to the taxpayer. Ultimately, the interests of the aviation community will be better served because safety will be enhanced.

I am prepared to consult with your staff and make such a contribution as I am able toward these ends.

Addendum: The nomination of James Burnett

When my testimony was prepared, there existed the possibility that Mr. Burnett would not be nominated for a second term as chairman of the NTSB. Since he has in fact been nominated, I ask the Subcommittee's indulgence of the following remarks:

I oppose confirmation of Mr. Burnett. My Colleagues agree with me.

Virtually all of the problems with NTSB management mentioned in the text of my remarks were the result of Mr. Burnett's intransigent refusal to accommodate the legitimate interests of industry, as his predecessors did with no detriment to the public in any particular.

His management has been characterized by turmoil within and without the NTSB. Scores of valuable people have left the NTSB in disgust, and industry has been subjected to losses and expenses which would not have occurred under a competent chairman.

It is said by some that Mr. Burnett has been an effective advocate of air safety. Even if that assessment is correct, which is arguable, he has caused so much organic damage that I suggest that an effective advocate who is a competent manager with an understanding of the legitimate interests of others, could be found with little trouble.

My respect for this administration runs deep, but I must say that an error has been made in this case. Several published news items, which are in the possession of the Subcommittee staff, address this issue in greater detail.

I ask that Mr. Burnett's record during his last term as chairman be carefully examined. If that is done, I am confident that his nomination will be, as his record clearly requires, rejected.

Senator KASSEBAUM. That concludes today's hearing.

[Whereupon, at 4:10 p.m. the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF ALAN R. STEPHEN, EXECUTIVE VICE PRESIDENT, REGIONAL AIRLINE ASSOCIATION

I am Alan R. Stephen, Executive Vice President for the Regional Airline Association (RAA). On behalf of our nation's short haul airlines, I appreciate this opportunity to appear here today to present our members' views on reauthorizing the National Transportation Safety Board (NTSB).

The Regional Airline Association, without reservation, supports continuation of this capable and vital independent agency.

Over the years, the NTSB has performed a very important role in air transportation safety—that of independent investigator. Whether looking for the probable cause of accidents, or making safety recommendations or conducting special studies, the NTSB has helped direct the Federal Aviation Administration and the aviation industry to achieve the highest standards of air safety.

I can cite several examples of this vital NTSB role involving regional airline operations. Several years ago, the Board conducted an En Banc review of commuter airline safety standards and operating practices. That study verified the high level of industry compliance with FAA standards while pointing out where those FAA standards might need revision. We supported that study and found its conclusions helpful.

NTSB accident investigations are another important resource. Following a commuter accident involving hazardous weather, the RAA in conjunction with the AOPA Air Safety Foundation undertook a nationwide training program for commuter airline pilots to improve their knowledge of weather radar and how to use such equipment to avoid the kind of hazardous weather that led to that accident. For another example, we are currently studying procedures for regional airline operations from non-towered general aviation airports, a study which stemmed from an NTSB accident investigation.

Commuter airline pilot qualification and training is another subject of mutual interest. The RAA has devoted considerable attention to this issue during the past five years and we welcome the Safety Board's support in gaining FAA approval for use of high quality training devices in Part 135 operations.

In reauthorizing the NTSB, we have several recommendations to offer this committee.

First, the RAA believes that all five Board members should have technical expertise in transportation, not three as the law now requires. While we can cite Board members such as Vice Chairman Patricia Goldman who have served with great distinction without such previous qualification, the increasingly technical nature of accident investigation and analysis can only be served by confirming appropriately qualified candidates.

Second, the RAA urges Congress to exempt the NTSB from any Gramm Rudman Hollings spending cuts that might result from a failure to achieve national budget deficit targets. In this time when every dollar of federal expenditure must be scrutinized, the NTSB like other agencies must justify its budget, staffing levels and program priorities. We believe the NTSB, however, is already dangerously close to the minimum resources necessary to accomplish its mission. Further cuts can only mean a reduction in the number and thoroughness of its accident investigations, a reduction in the continuing education and training required for its technical personnel, and ultimately perhaps a reduction in staffing.

In remarks before the House Aviation Subcommittee on March 12, 1986, NTSB Chairman Jim Burnett outlined the Board's concern over Gramm Rudman Hollings and how it may require the NTSB to order such actions. I hope you agree with us that the NTSB's vital safety-related functions must be protected from such automatic budget cuts and that funding should be provided on the basis of program needs.

Finally, the RAA recommends that the Congress undertake a review of the NTSB policies and practices. We are concerned that more than sixty of the Board's skilled technicians, a sizable proportion of the total, have left the agency in the past two years. The effectiveness of the Board's investigations and issuance of safety recommendations depends on the technical competence of its staff and its ability to maintain knowledge and expertise in the fast-changing transportation industry. This review, perhaps to be conducted by the Government Accounting Office, should address such factors as the relationship between the Board's professional staff and appointed members; how well present technical expertise and staffing levels meet anticipated needs and what if any changes in personnel policies should be under taken to encourage key employees to remain. Such a study should be considered as an appropriate mid-course review, helpful to the Congress, the public and the NTSB in assuring that the Board can continue to function with full independence and capability.

Thank you for your interest in the views of the Regional Airline Association. I would be most pleased to answer any questions you may have.

STATEMENT OF JOHN L. BAKER, PRESIDENT, AIRCRAFT OWNERS AND PILOTS ASSOCIATION

Madam Chairman, I am John L. Baker, president of the Aircraft Owners and Pilots Association (AOPA), which represents the aviation interests of 260,000 members who own and operate general aviation aircraft for business and personal purposes. I want to thank you for this opportunity to discuss the reauthorization of the National Transportation Safety Board (NTSB).

Since AOPA represents the largest number of civil aviation operators in the United States, aviation safety is a primary goal. NTSB has reported that 1985 was general aviation's safest year. For the first time in recent years, total accidents declined to less than 3,000 and fatalities were under 1,000 for the year. Current accident data indicates that 1986 will be even safer.

This record is due in part to the investigations and analysis performed by the National Transportation Safety Board. NTSB investigations enhance aviation safety by discovering the cause of accidents and recommending ways to avoid them.

NTSB RESPONSIBILITIES

It is important to recognize during this hearing that the statutory responsibility of the NTSB is:

"to promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations;"

"to vigorously investigate accidents involving transportation modes regulated by other agencies of Government;"

"to continually review and assess the operating practices and regulations of all such agencies"; and

"to make conclusions and recommendations that may be critical of or adverse to any such agency or its officials."

NTSB's work has often led to substantive changes that have enhanced the safety of our aircraft and the environment in which we fly. This is a product of the high quality NTSB staff and their dedication to transportation safety. In many respects, NTSB serves as the impartial safety conscience of the transportation industry. It is for these reasons we strongly support an active and enhanced role for the National Ttansportation Safety Board.

NTSB STAFF AND FUNDING

The Board simply cannot conduct meaningful investigations of more than 2,700 aircraft accidents per year, let alone the volume of accidents in the other transportation modes, without adequate staff and funding.

We believe the proposed three-year authorization for the National Transportation Safety Board is not adequate to fund the minimum prudent NTSB programs or to fulfill its statutory mandate.

AOPA supports an increase in the NTSB's annual budget for technical and investigations staff. The Washington-based staff conducts all the background research and in-depth investigation necessary to obtain a full understanding of accident causes and factors. Considering the necessary coverage of all transportation modes, this function is in critical need of additional staff.

Additionally, there are presently 48 air safety investigators allocated to field investigation, with only 43 investigators actually on the job. Therefore, on average, each investigator must cover at least 60 aircraft accidents annually, plus any additional assigned duties. Uncovering the cause of many aircraft accidents can demand months of work? As a result, investigators are forced by necessity to make only "desk audits" or paper reviews of the less spectacular accidents. This defeats the analysis and prevention purpose for which the NTSB was originally established.

While it is true that the total number of accidents is declining at the same time flight activity is increasing, it does not necessarily follow that fewer accidents translate to a need for fewer investigators. As accidents have declined, primarily due to pilot education, the remaining accidents tend to be complex and their causes a challenge to uncover. In a sense, the easy accidents to prevent have been largely taken care of, and the remaining ones will require increased resources and investigative insight to prevent.

We believe 20 additional field investigators are needed to provide investigations conducive to further improvement in the general aviation accident record. Our analysis indicates that NSTB can meet its responsibilities within its requested budget of $24 million in fiscal year 1987, $25.4 million in fiscal year 1988, and $27 million in fiscal year 1989 when accompanied by a staff authorization of 347 positions. The present staff level of 324 positions is simply too low and far under the 401 positions wisely authorized in the early 1980s.

Clearly, the Administration's fiscal year 1987 recommended NTSB budget of $21.4 million is unacceptable. This proposal, which is nearly $6 million below the needed level, would continue staff reductions which have already progressed beyond reason and render NTSB incapable of performing its respected and much needed investigation and accident analysis roles.

ADMINISTRATIVE LAW JUDGES

The NTSB also acts as a court of appeals for individuals cited for violations of the Federal Aviation Regulations by the Federal Aviation Administration. There are presently five administrative law judges (ALJ) to hear hundreds of cases each year, and the caseload backlog is extensive. The backlog is expected to grow due to stepped-up FAA enforcement activities. Adding two additional judges would greatly expedite this process and ensure fair and nondiscriminatory access to an appeal.

MANAGEMENT EFFICIENCY

In these times of acute public concern over Federal spending, it is critical that Congress maintain diligent oversight to ensure that maximum value is received for every tax dollar spent. This requires Congress to provide incentives for management efficiency while at the same time authorizing funding levels which will fulfill the statutory responsibility an Agency possesses. Congressional involvement and assurance is especially critical when considering governmental functions that contribute to safety.

The NTSB has been criticized for the quality of some recent investigations. This criticism from some quarters concerns management difficulties, staff problems, and the reduced quality of service. AOPA believes that many of these problems have as their source NTSB budget cutbacks, the resultant loss of experienced NTSB technical staff and field investigators, and an insufficient number of administrative law judges. We also believe that an independent review of present NTSB management policies would

also be very helpful in identifying reforms necessary to overcome administrative deficiencies.

AOPA is concerned about recent rulemaking which renders a lawyer ineligible to act as a spokesperson at accident hearings conducted by the Board. This rule was adopted without Notice of Proposed Rulemaking, without opportunity for comment, and without indication that such a rule was being considered.

AOPA has been a frequent participant in activities of the Board that affect general aviation, including accident investigation. In those which have involved a public hearing, the Association has had a lawyer as its spokesman. In each hearing, the Federal Aviation Administration has had a lawyer as its spokesman. Generally, each air carrier involved in hearings has had a lawyer as its spokesman. It has been our experience that the participation of the spokesmen has advanced the work of the Board.

We are sensitive to the Board's desire to divorce liability considerations from its accident investigation function. We agree with the Board's rule that no party may be represented by any person who also represents claimants or insurers.

We have asked that the Board withdraw this rule and issue a Notice of Proposed Rulemaking to permit an opportunity for public comment and a more informed judgment by the Board regarding the rule. This, though, is an example of the sort of administrative practices that discourage the public.

QUALIFIED NTSB BOARD MEMBERS

NTSB appropriately has no regulatory powers and, therefore, must rely on its reputation as the preeminent transportation safety organization in the world. If its capability or credibility is compromised in any way, the effectiveness of the Board will be diminished. The credibility stems from having the best possible technical experts in a variety of disciplines relating to transportation safety. The findings and recommendations of the Board and staff must be presented persuasively to regulatory agencies and the public. Maintaining credibility requires a sufficient, stable level of funding.

A key to this credibility is also qualified, high-quality appointees to the Board. AOPA has long advocated that all NTSB Board members be appointed on the basis of technical qualifications and demonstrated experience in a field related to transportation safety. In fact, AOPA drafted legislation which, though amended from five, requires three of five appointees to be technically qualified. While management ability and political credentials are certainly prerequisites to Board appointment, transportation safety experience must far outweigh these two factors when considering an individual for these critical safety analysis positions.

If the Board members are not adequately prepared to fulfill these functions, then the work of the Board will inevitably suffer. The technical complexity of all modes of transportation demands more than just a passing interest or understanding by those appointed to judge the efficacy of recommendations designed to reduce the levels of accidents in our Nation's transportation system.

Each Board member must challenge and stimulate the NTSB staff to provide the public with the best possible safety product. The public's high level of concern in transportation safety will permit no less.

For this reason, it is essential that the full compliment of five qualified Board Members be maintained. Fortunately, the Congress has acted responsibly by rejecting the Administration's recent nominations of unqualified persons for the Board. AOPA, along with other transportation interests, will continue to aggressively pursue its responsibility to seek expeditious nomination of qualified candidates for open positions on the Board.

The Aircraft Owners and Pilots Association appreciates this opportunity to testify on this important subject. I would be happy to answer any questions.

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